



August 3, 2018

Tara Jennings  
200 Hollow Tree Ln, Apt 1105  
Houston, TX 77090-2811

Re: Fair Hearing – Community Care Disaster Assistance Program  
Case Number: 500759106, Appeal ID: 2823906

Dear Tara Jennings:

I have carefully considered the information presented regarding the appeal and found the agency's action was correct. See the attached final order for complete information about my decision.

If you are dissatisfied with the hearing decision, you may request a procedural review or an administrative review, if authorized by State law. Your request must be submitted in writing to the following address within 30 days from the date of this letter: Hearings Director, Mail Code W-613, P.O. Box 149030, Austin, TX, 78714 or fax to 512-231-5743. If your attorney would like to submit a brief, it must be submitted with the review request, and it must be no more than five pages.

The nearest legal services office to you is: Lone Star Legal Aid-Houston Office, 500 Jefferson, 17th Floor, Houston, TX, 77002, and phone number 800-733-8394.

To obtain information in Spanish, please call 713-696-3618.

Sincerely,

A handwritten signature in black ink, appearing to read "Thelma Maldonado".

Thelma Maldonado for Judith Payne  
Hearings Officer

Enclosure: Final Decision

cc: Health and Human Services Commission (HHSC)  
File



**APPEAL ID 2823906**

**In the Matter  
Of  
Tara Jennings  
Appellant**

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**Order of the  
Texas Health and Human  
Services Commission**

**ORDER**

The undersigned designee of the Executive Commissioner, having received and considered the evidence submitted in this matter, is of the opinion that the preponderance of the evidence establishes that the decision on appeal is in accordance with applicable law and policy. Therefore, that decision is **SUSTAINED**.

Findings of Fact and Conclusions of Law are attached.

Signed this 3rd day of August, 2018

A handwritten signature in cursive script, appearing to read "Maldonado".

Thelma Maldonado for Judith Payne  
Hearings Officer  
Health and Human Services Commission



**APPEAL ID 2823906**

**Before the  
Texas Health and Human Services Commission  
Appeals Division**

**In the Matter  
Of  
Tara Jennings  
Appellant**

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**Fair Hearing  
Decision**

**I. INTRODUCTION**

A fair hearing was conducted on June 27, 2018. The hearing record was closed on June 27, 2018.

Appearances:

Tara Jennings, Appellant

Jessica Jackson, Agency Representative, Health and Human Services (HHSC)

Varian Luecke, Agency Representative, Health and Human Services (HHSC)

**A. Purpose of Fair Hearing**

The purpose of the hearing was to determine whether the Disaster Assistance denial for personal property was in accordance with policy and law.

**B. Legal Authority**

The hearing was conducted under the authority provided by Title 1, Sections 357.1 through 357.25 of the Texas Administrative Code and related law.

**II. PROCEDURAL HISTORY**

1. On May 23, 2018, Agency notified Appellant of the denial.
2. Appellant disagreed with the denial and filed an appeal on May 23, 2018.

3. A Notice of Hearing was mailed to Appellant on May 31, 2018, by first class mail for a hearing scheduled for June 27, 2018.
4. A hearing was convened on June 27, 2018.

### **III. RELEVANT AUTHORITIES**

#### **Federal Assistance to Individuals and Households Program: Other Needs Assistance Handbook (IHPONA):**

##### **10110 Serious Need and Necessary Expense**

"Serious need" and "necessary expense" are synonymous terms and imply that the grant program is intended to provide funds for essential items and services. It is not intended to fully indemnify disaster losses (that is, restore the recipient fully to pre-disaster condition), or to purchase items or services that may generally be characterized as nonessential, luxury or decorative. In addition, federal regulations require grants to meet needs but prohibit the program from duplicating benefits.

##### **10210.11 Personal Property Guidelines**

###### Eligible Expenses

PP Line Items (Clothing): There is one award amount for clothing items deemed necessary for seven days based on the need for one individual. Assistance is not awarded for specific clothing items. The state will apply the same level of award to adults, infants and children regardless of age or gender.

Assistance for clothing will be provided to the applicant and his/her household dependents based on need. Need is determined by the number of people with damaged clothing noted by the inspector. Clothing will not be awarded unless the clothing is destroyed, physically gone (for example, blown away) or contaminated by chemicals, sewer backup, etc. It is expected that clothing that is soaked by wind-driven rain, seepage or flood waters will be cleaned by applicant. Clothing assistance will only be awarded at the replacement line item pricing. Clothing will not be paid per actual incurred expenses or with regard to the season.

###### Considerations Related to Personal Property

###### **Verification:**

- Assistance will be awarded based upon the recorded line items by the inspector.
- Personal property assistance for clothing, appliances and room furnishings will usually be based upon on-site verification.

## **Stafford Act Section 408(e) (2) 44 CFR 206.119 (b)**

### A. Other Needs Assistance Personal Property

2. Specific conditions of eligibility:

(h) Verified damage to essential personal property

4. If an inspection identifies any personal property items as not affected, insured or landlord owned and the quantity limit has been met, then the applicant will be ineligible for personal property assistance regarding those items.

### C. Appliances

1. Assistance with appliances is based on the inspection, determination if not affected, landlord owned, repair or replace.

2. Assistance for appliances is based on need as determined from a single inspection report.

(b) If not affected, insured, or landlord owned item meets the item quantity limit, then the applicant will be ineligible for assistance for that item as the item meets the household needs.

### D. Clothing

1. FEMA defines an essential need for clothing as: the amount of clothing items deemed necessary per household member for seven days, if existing clothing has been destroyed or lost. The loss is recorded as a lump sum with a quantity limit of one per each household member recorded. Assistance is not awarded for specific clothing items. At the time of the inspection, if a household member has damaged clothing but still has available clothing to meet their essential need, clothing will not be recorded. This includes seasonal clothing.

2. Clothing that is soaked by wind driven rain, seepage, or flood waters will be cleaned by the applicant.

## **Stafford Act Section 423; 44 CFR 206.115**

### Inspection Personal Property Loss Verification

C. Not verified losses not supported by damages do not require an inspector's comment and are identified as:

1. The inspector did not see the items and the surrounding evidence does not support the applicant's claim of disaster caused by damage to the items.
2. The applicant stated they removed undamaged personal property prior to inspection.
3. The applicant denies the inspector access to certain rooms in the dwelling.

#### **IV. SUMMARY OF EVIDENCE**

The Hearings Officer has carefully considered the evidence contained in the hearing record and makes the following findings of fact and conclusions of law based on the weight of the evidence presented and in accordance with the burdens of proof explained in 1 TAC 357.9.

#### **V. FINDINGS OF FACT**

**Finding of Fact 1:** On August 29, 2017, Appellant filed an application with the Federal Emergency Management Agency (FEMA) for assistance with medical, moving and storage, dental, transportation and personal property. Appellant was denied by the Small Business Administration and referred to the Other Needs Assistance (ONA).

**Finding of Fact 2:** On September 8, 2017, an initial inspection completed by FEMA indicated that the damage was not disaster related but an existing plumbing problem with the apartment complex. The landlord verified that mold was present due to the on-going issues with the plumbing.

**Finding of Fact 3:** On September 9, 2017, FEMA awarded Appellant \$500.00 for Eligible Critical Needs Assistance to cover immediate needs such as evacuation expenses, food, clothing, and medications.

**Finding of Fact 4:** On September 16, 2017, Appellant submitted low quality photographs from inside her home. ONA was unable to determine the extent of the damage from these photos. Appellant included a letter stating the disaster had caused mold and mildew in her walls and her children were becoming ill.

**Finding of Fact 5:** On September 17, 2017, FEMA denied Housing Assistance (HA) as her home was deemed safe to occupy.

**Finding of Fact 6:** On October 31, 2017, Appellant submitted a receipt from Appliance Warehouse showing she had rented a washing machine. Appellant submitted a picture of a couch and agency could not determine if the couch was

damaged or if this was a new couch. Appellant submitted a receipt from Affordable Furniture which was not legible.

**Finding of Fact 7:** On January 10, 2018, FEMA awarded Appellant \$1,742.00 in Rental Assistance and mailed a letter to Appellant explaining the decision.

**Finding of Fact 8:** On January 12, 2018, Appellant submitted a listed of damaged personal property items: kids clothing, woman clothing, sofa, loveseat, area rug and a 40 inch TV. Appellant submitted a letter regarding her moving and storage expenses and multiple receipts for food and clothing.

**Finding of Fact 9:** On February 22, 2018, a second inspection was conducted however, the inspector was unable to verify the personal property damage because the unit was rented to someone else and Agency did not have access.

**Finding of Fact 10:** On February 27, 2018, ONA denied Appellant's request for personal property assistance.

**Finding of Fact 11:** On May 23, 2018, ONA contacted the landlord who verified the issue with the mold was not related to Hurricane Harvey.

**Finding of Fact 12:** On May 28, 2018, FEMA awarded an additional \$4,567.00 in Rental Assistance and mailed a letter to Appellant explaining the decision. The total amount in Rental Assistance provided to Appellant was \$6,309.00.

## **VI. CONCLUSIONS OF LAW**

**Conclusion of Law 1:** Section 10210.11 of the IHPONA Handbook specifies that assistance will be awarded based upon the recorded line items by the inspector. Personal property assistance for clothing, appliances and room furnishings will usually be based upon on-site verification. Assistance for clothing will be provided to the applicant and his/her household dependents based on need. Need is determined by the number of people with damaged clothing noted by the inspector. It is expected that clothing that is soaked by wind-driven rain, seepage or flood waters will be cleaned by applicant. Clothing assistance will only be awarded at the replacement line item pricing. Clothing will not be paid per actual incurred expenses. Although Appellant submitted several receipts for clothing, Agency correctly allowed the amount based on need. Some of the existing clothing could be washed by Appellant.

**Conclusion of Law 2:** Stafford Act Section 408(e) (2)44 CFR 206.119 (b), specifies that if an inspection identifies any personal property items as not affected, insured or landlord owned and the quantity limit has been met, then the applicant will be ineligible for personal property assistance regarding those items. In this

case, the damage to the property was due to an existing plumbing issue and not related to Hurricane Harvey.

**Conclusion of Law 3:** Stafford Act Section 423; 44 CFR 206.115 specifies that losses not supported by damages and not verified do not require an inspector's comment. The inspector did not see the items and the surrounding evidence does not support the applicant's claim of disaster caused by damage to the items. The mold in the apartment was caused by an existing plumbing issue. At the request of a second inspection, Agency was denied access to the apartment as it was already leased to someone else. Therefore, the Agency's action to deny personal property assistance is sustained.

## **VII. EXHIBITS**

### **Exhibit 1:**

Pages 1-10:	Program Information
Pages 11-13:	Case Summary
Pages 14-24:	Policy
Pages 25:	Overview
Pages 26:	Initial Inspection
Pages 27-29:	Denial
Pages 30-41:	Eligible - Critical Needs Assistance (ECNA) Award letter
Pages 42-43:	Appeal Letter
Pages 44-45:	Denial Letter
Pages 46-51:	Letter from Appellant
Pages 52-54:	Rental Assistant Award Letter
Pages 55-79:	Letter from Appellant
Pages 80-82:	Inspection
Pages 83-85:	Denial Letter
Pages 86-90:	Letter from Appellant
Pages 91-93:	Other needs assistance contact
Pages 94-96:	Rental Assistant Award Letter
Pages 97-117:	Policy
Pages 118-120:	Inspection History
Pages 121-129:	Texas Administrative Code

Signed this 3rd day of August, 2018



Thelma Maldonado for Judith Payne  
Hearings Officer